

AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Eastern District of Texas, Marshall Division on the following

☐ Trademarks or ☒ Patents. (☒ the patent action involves 35 U.S.C. § 292.);

DOCKET NO. 2:10-cv-00582-DF	DATE FILED 12/21/2010	U.S. DISTRICT COURT Eastern District of Texas, Marshall Division
PLAINTIFF Main Hastings LLC		DEFENDANT Mechanical Plastics Corp., et al.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 4,993,901	2/19/1991	Mechanical Plastics Corp.
2 5,028,186	7/2/1991	Mechanical Plastics Corp.
3 4,878,790	11/7/1989	Mechanical Plastics Corp.
4 4,650,386	3/17/1987	Mechanical Plastics Corp.
5 4,673,150	6/16/1987	Mechanical Plastics Corp.

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED 3/3/2011	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input checked="" type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 4,752,170	6/21/1988	Mechanical Plastics Corp.
2 4,294,156	10/13/1981	Mechanical Plastics Corp.
3 4,075,924	2/28/1978	Mechanical Plastics Corp.
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
CLERK	(BY) DEPUTY CLERK	DATE

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

27. The '170 Patent entitled, "Fastening Device with Nesting Anchoring Elements," was filed on September 4, 1986 and issued on June 21, 1988. The '170 Patent expired on September 4, 2006.

28. The '156 Patent entitled, "High Strength Anchor Assembly For Fastener," was filed October 6, 1978 and issued on October 13, 1981. The '156 Patent expired on October 13, 1998.

29. The '924 Patent entitled, "Anchor assembly For Fastener," was filed on May 14, 1976 and issued on February 28, 1978. The '924 Patent expired on May 14, 1996.

CAUSES OF ACTION FOR FALSE PATENT MARKING

30. Main Hastings incorporates by reference the foregoing paragraphs as if fully set forth herein.

31. Defendants are sophisticated companies with many decades of experience applying for, obtaining, and litigating patents, and therefore know that all patents expire and that all monopoly rights in a patent terminate irrevocably when it expires.

32. Defendants have or regularly retain, sophisticated legal counsel.

33. Each false marking on the products identified in this Complaint is likely to, or at least has the potential to, discourage or deter persons and companies from commercializing competing products.

34. Defendants' false marking of their products has wrongfully quelled competition with respect to such products thereby causing harm to Main Hastings, the United States, and the public.

35. Defendants have wrongfully and illegally advertised patent monopolies that they do not possess and, as a result, have benefited by maintaining a substantial market share with respect to the products referenced in this Complaint.

36. Defendants know that patents provide the patent holder extreme market power to monopolize the invention.

37. Defendants know that all patents expire and that all monopoly rights in the patent terminate irrevocably when it expires.

38. As set forth in detail herein, and/or for other reasons that will be later evidenced, Defendants have falsely marked the products described below, with the intent to deceive the public, in violation of 35 U.S.C. §292. Despite the creation of, and/or one or more revisions to, Defendants' product packaging, product literature and/or product webpages after the expiration of the patents (the majority of which have been expired for many years), Defendants nevertheless have knowingly and repeatedly used, and continue to the present day to use, the expired patents in advertising and offering for sale the products with the intent to deceive the public.

COUNTS 1-8: FALSE MARKING ON DEFENDANTS' PRODUCTS

COUNT 1: THE '901 PATENT

39. The Plaintiff incorporates and restates the allegations of Paragraphs 1-38.

40. As noted above in paragraph 22, the '901 Patent is expired. Because the '901 Patent is expired, any product once covered by the '901 Patent is no longer protected by the patent laws of the United States. When the '901 Patent expired, their formerly protected property entered the public domain.

41. Despite the fact the '901 Patent is no longer in force, Defendants Mechanical Plastics Corp., Lawson Products Inc. and Biashara Group LLC have and continue to mark (or cause to be marked) various products, including the Toggler® Wall Anchors, with the '901 Patent. See Exhibits I – N attached hereto.

42. Despite their knowledge of patent law and the current status of the '901 Patent,

such Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '901 Patent. Such Defendants knew or reasonably should have known that marking their products with the '901 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

43. Such Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

44. Such Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, the packaging, advertising, and/or product literature of the Toggler® Wall Anchors with the '901 Patent.

COUNT 2: THE '186 PATENT

45. The Plaintiff incorporates and restates the allegations of Paragraphs 1-38.

46. As noted above in paragraph 23, the '186 Patent is expired. Because the '186 Patent is expired, any product once covered by the '186 Patent is no longer protected by the patent laws of the United States. When the '186 Patent expired, their formerly protected property entered the public domain.

47. Despite the fact the '186 Patent is no longer in force, Defendants Mechanical Plastics Corp., Lawson Products Inc. and Biashara Group LLC have and continue to mark (or cause to be marked) various products, including the Toggler® Wall Anchors, with the '186 Patent. See Exhibits I – N attached hereto.

48. Despite their knowledge of patent law and the current status of the '186 Patent, such Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '186 Patent. Such Defendants knew or reasonably should have known that marking their products with the '186 Patent after its expiration violated Federal patent marking

laws which authorize marking only existing and enforceable patent or patent pending claims on a “patented” article.

49. Such Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

50. Such Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, the packaging, advertising, and/or product literature of the Toggler® Wall Anchors with the ‘186 Patent.

COUNT 3: THE ‘790 PATENT

51. The Plaintiff incorporates and restates the allegations of Paragraphs 1-38.

52. As noted above in paragraph 24, the ‘790 Patent is expired. Because the ‘790 Patent is expired, any product once covered by the ‘790 Patent is no longer protected by the patent laws of the United States. When the ‘790 Patent expired, their formerly protected property entered the public domain.

53. Despite the fact the ‘790 Patent is no longer in force, Defendants Mechanical Plastics Corp., Lawson Products Inc. and Biashara Group LLC have and continue to mark (or cause to be marked) various products, including the Toggler® Wall Anchors, with the ‘790 Patent. See Exhibits I – N attached hereto.

54. Despite their knowledge of patent law and the current status of the ‘790 Patent, such Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the ‘790 Patent. Such Defendants knew or reasonably should have known that marking their products with the ‘790 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a “patented” article.

55. Such Defendants intended to and have deceived the public by falsely marking (or

causing to be marked) the patent protection status of their products.

Such Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, the packaging, advertising, and/or product literature of the Toggler® Wall Anchors with the '790 Patent.

COUNT 4: THE '386 PATENT

56. The Plaintiff incorporates and restates the allegations of Paragraphs 1-38.

57. As noted above in paragraph 25, the '386 Patent is expired. Because the '386 Patent is expired, any product once covered by the '386 Patent is no longer protected by the patent laws of the United States. When the '386 Patent expired, their formerly protected property entered the public domain.

58. Despite the fact the '386 Patent is no longer in force, Defendants Mechanical Plastics Corp., Lawson Products Inc. and Newood Display Fixture Mfg. Co. have and continue to mark (or cause to be marked) various products, including the Toggler® Wall Anchors, with the '386 Patent. See Exhibits I – L and O attached hereto.

59. Despite their knowledge of patent law and the current status of the '386 Patent, such Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '386 Patent. Such Defendants knew or reasonably should have known that marking their products with the '386 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

60. Such Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

Such Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, the packaging, advertising, and/or product literature of the

Toggler® Wall Anchors with the '386 Patent.

COUNT 5: THE '150 PATENT

61. The Plaintiff incorporates and restates the allegations of Paragraphs 1-38.

62. As noted above in paragraph 26, the '150 Patent is expired. Because the '150 Patent is expired, any product once covered by the '150 Patent is no longer protected by the patent laws of the United States. When the '150 Patent expired, their formerly protected property entered the public domain.

63. Despite the fact the '150 Patent is no longer in force, Defendants Mechanical Plastics Corp., and Lawson Products Inc. have and continue to mark (or cause to be marked) various products, including the Toggler® Wall Anchors, with the '150 Patent. See Exhibits I – L attached hereto.

64. Despite their knowledge of patent law and the current status of the '150 Patent, such Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '150 Patent. Such Defendants knew or reasonably should have known that marking their products with the '150 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a “patented” article.

65. Such Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

Such Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, the packaging, advertising, and/or product literature of the Toggler® Wall Anchors with the '150 Patent.

COUNT 6: THE '170 PATENT

66. The Plaintiff incorporates and restates the allegations of Paragraphs 1-38.

67. As noted above in paragraph 27, the '170 Patent is expired. Because the '170 Patent is expired, any product once covered by the '170 Patent is no longer protected by the patent laws of the United States. When the '170 Patent expired, their formerly protected property entered the public domain.

68. Despite the fact the '170 Patent is no longer in force, Defendants Mechanical Plastics Corp., Lawson Products Inc. and Minerallac Company have and continue to mark (or cause to be marked) various products, including the Toggler® Wall Anchors, with the '170 Patent. See Exhibits I – L and P attached hereto.

69. Despite their knowledge of patent law and the current status of the '170 Patent, such Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '170 Patent. Such Defendants knew or reasonably should have known that marking their products with the '170 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

70. Such Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

Such Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, the packaging, advertising, and/or product literature of the Toggler® Wall Anchors with the '170 Patent.

COUNT 7: THE '156 PATENT

71. The Plaintiff incorporates and restates the allegations of Paragraphs 1-38.

72. As noted above in paragraph 28, the '156 Patent is expired. Because the '156 Patent is expired, any product once covered by the '156 Patent is no longer protected by the patent laws of the United States. When the '156 Patent expired, their formerly protected

property entered the public domain.

73. Despite the fact the '156 Patent is no longer in force, Defendants Lawson Products Inc. and Newood Display Fixture Mfg. Co. have and continue to mark (or cause to be marked) various products, including the Toggler® Wall Anchors, with the '156 Patent. See Exhibits L and P attached hereto.

74. Despite their knowledge of patent law and the current status of the '156 Patent, such Defendants have and continue to falsely mark (or cause to be marked) their products as being covered by the '156 Patent. Such Defendants knew or reasonably should have known that marking their products with the '156 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

75. Such Defendants intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of their products.

Such Defendants have violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, the packaging, advertising, and/or product literature of the Toggler® Wall Anchors with the '156 Patent.

COUNT 8: THE '924 PATENT

76. The Plaintiff incorporates and restates the allegations of Paragraphs 1-38.

77. As noted above in paragraph 29, the '924 Patent is expired. Because the '924 Patent is expired, any product once covered by the '924 Patent is no longer protected by the patent laws of the United States. When the '924 Patent expired, their formerly protected property entered the public domain.

78. Despite the fact the '924 Patent is no longer in force, Defendant Newood Display Fixture Mfg. Co. has and continues to mark (or cause to be marked) various products, including

the Toggler® Wall Anchors, with the '924 Patent. See Exhibit P attached hereto.

79. Despite its knowledge of patent law and the current status of the '924 Patent, such Defendant has and continues to falsely mark (or causes to be marked) its products as being covered by the '924 Patent. Such Defendant knew or reasonably should have known that marking its products with the '924 Patent after its expiration violated Federal patent marking laws which authorize marking only existing and enforceable patent or patent pending claims on a "patented" article.

80. Such Defendant intended to and have deceived the public by falsely marking (or causing to be marked) the patent protection status of its products.

Such Defendant has violated 35 U.S.C. §292(a) by marking (or causing to be marked), with intent to deceive the public, the packaging, advertising, and/or product literature of the Toggler® Wall Anchors with the '924 Patent.

DAMAGES

81. The Plaintiff incorporates and restates the allegations of Paragraphs 1-80.

82. Upon information and belief, Defendants know, or reasonably should know, that marking their products with false patent statements was and is illegal under Title 35 of the United States Code.

83. Each falsely marked product is a separate "offense" pursuant to 35 U.S.C. §292(a).

PRAYER FOR RELIEF

84. WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants as follows:

85. A decree that Defendants have falsely marked products in violation of 35 U.S.C. § 292;

86. An award of monetary damages, pursuant to 35 U.S.C. § 292, in the form of a civil monetary fine of \$500 per false marking "offense," or an alternative amount as determined by the Court, one half of which should be paid to the United States of America and one-half of which shall be paid to Main Hastings;

87. An accounting for any falsely marked products not presented at trial and an award by the Court of additional damages for any such falsely marked products;

88. Enter a judgment and order requiring each Defendant to pay Main Hastings prejudgment and post-judgment interest on the damages awarded;

89. Order Defendants to pay Main Hastings' costs and attorney fees; and

90. Grant Main Hastings such other and further relief as it may deem just and equitable.

DEMAND FOR JURY TRIAL

91. Pursuant to Federal Rules of Civil Procedure Rule 38, Plaintiff hereby demands a jury trial on all issues triable by jury.

Dated: December 21, 2010

Respectfully submitted,

/s/ Winston O. Huff

Winston O. Huff, Attorney in Charge
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972.378.9111 (Firm)
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wohuff@hufflegallgroup.com

ATTORNEYS FOR PLAINTIFF
MAIN HASTINGS, LLC

CERTIFICATE OF FILING

I hereby certify that on December 21, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

Respectfully submitted,

By: /s/ Winston O. Huff

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CERTIFICATE OF SERVICE

This is to certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 21st day of December, 2010.

/s/ Winston O. Huff

recognizes an important public interest in permitting full and free competition in the use of ideas that are, in reality, a part of the public domain.

4. False patent marking – including representing through advertisement that a product is covered by a patent that has expired - is a serious problem. Acts of false marking deter innovation and stifle competition in the marketplace. If an article that is within the public domain is falsely marked, potential competitors may be dissuaded from entering the same market. False marks may also deter scientific research when an inventor sees a mark and decides to forego continued research to avoid possible infringement. False marking can cause unnecessary investment in design around or costs incurred to analyze the validity or enforceability of a patent whose number has been marked upon a product with which a competitor would like to compete. Furthermore, false marking misleads the public into believing that a patentee controls the article in question (as well as like articles), externalizes the risk of error in the determination, placing it on the public rather than the manufacturer or seller of the article, and increases the cost to the public of ascertaining whether a patentee in fact controls the intellectual property embodied in an article. In each instance where it is represented that an article is patented, a member of the public desiring to participate in the market for the marked article must incur the cost of determining whether the involved patents are valid and enforceable. Failure to take on the costs of a reasonably competent search for information necessary to interpret each patent, investigation into prior art and other information bearing on the quality of the patents, and analysis thereof can result in a finding of willful infringement, which may treble the damages an infringer would otherwise have to pay. False markings may also create a misleading impression that the falsely marked product is technologically superior to previously available ones, as articles bearing the term “patent” may be presumed to be novel, useful, and innovative.

5. The false marking statute explicitly permits *qui tam* actions. By permitting members of the public to sue on behalf of the government, Congress allowed individuals to help control false marking.

6. Main Hastings, on its own behalf and on behalf of the United States, seeks an award of monetary damages of not more than \$500 for each of Defendants' violations of 35 U.S.C. § 292(a), one-half of which shall be paid to the United States pursuant to 35 U.S.C. § 292(b).

THE PARTIES

7. Main Hastings is a Texas limited liability company.

8. Defendant Mechanical Plastics Corp. is a corporation established under the laws of the State of New York with its principal place of business at 110 Richards Avenue Norwalk, CT 06854. Defendant Mechanical Plastics Corp. can be served at Mechanical Plastics Corp. c/o Feldesman & D'Atri, 122 East 42nd Street, New York, NY, 10017.

9. Defendant Lawson Products, Inc. is a corporation established under the laws of the State of Delaware with its principal place of business at 1666 E. Touhy Ave., Des Plaines, IL 60018. Defendant Lawson Products, Inc. can be served through its registered agent at The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

10. Defendant Biashara Group LLC d/b/a FMW Fasteners is a limited liability company established under the laws of the State of Texas with its principal place of business at 1438 North Post Oak, Houston, Texas 77055. Defendant Biashara Group LLC can be served through its registered agent, Taha Raja at 1438 North Post Oak, Houston, Texas 77055.

11. Defendant Newood Display Fixture Mfg. Co. is a corporation established under the laws of the State of Oregon with its principal place of business at 2125 Cross St,

Eugene, OR 97402. Defendant Newood Display Fixture Mfg. Co. can be served through its registered agent, Gerald S. Moshofsky at 2125 Cross St, Eugene, OR 97402.

12. Defendant Minerallac Company is a corporation established under the laws of the State of Illinois with its principal place of business at 127 E Lake Street, Bloomingdale, IL 60108-1180. Defendant Minerallac Company can be served through its registered agent at David A Rubenstein, 191 N. Wacker Drive, Suite 3700, Chicago, IL 60606.

13. Defendants regularly conduct and transact business in Texas, throughout the United States, and within the Eastern District of Texas, themselves and/or through one or more subsidiaries, affiliates, business divisions, or business units.

JURISDICTION AND VENUE

14. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

15. This Court has personal jurisdiction over the Defendants. The Defendants have conducted and do conduct business within the State of Texas. Defendants, directly or through subsidiaries or intermediaries, offer for sale, sell, mark and/or advertise the products that are the subject of this Complaint in the United States, the State of Texas, and the Eastern District of Texas.

16. Defendants have voluntarily sold the products that are the subject of this Complaint in this District, either directly to customers in this District or through intermediaries with the expectation that the products will be sold and distributed to customers in this District. These products have been and continue to be purchased and used by consumers in the Eastern District of Texas. Defendants have committed acts of false marking within the State of Texas and, more particularly, within the Eastern District of Texas.

17. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1395(a),

because (i) Defendants' products that are the subject matter of this cause of action are advertised, marked, offered for sale, and/or sold in various retail stores and/or on the Internet in this District; (ii) a substantial part of the events or omissions giving rise to the claim occurred in this District; and (iii) Defendants are subject to personal jurisdiction in this District, as described above.

18. Main Hastings brings this action under 35 U.S.C. §292(b), which provides that any person may sue for civil monetary penalties for false patent marking.

DEFENDANTS' FALSELY MARKED PRODUCTS AND PATENTS

A. TOGGLER® WALL ANCHORS

19. Defendants manufacture, market, and/or sell a product identified on its packaging and/or product literature as Toggler® Wall Anchors.

20. Figure 1 depicted below shows an image of certain examples of Toggler® Wall Anchors:

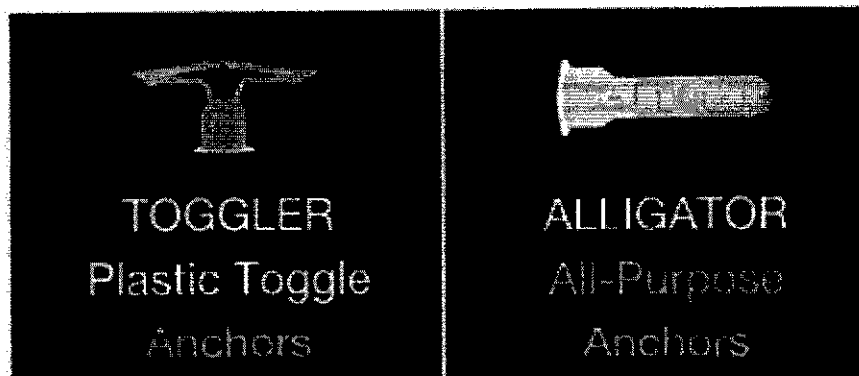


Figure 1 – Picture of Certain Toggler® Wall Anchors

21. For a period of time, the packaging and/or product literature for the Toggler® Wall Anchors has listed, among others, Patent Nos. 4,993,901 ("the '901 Patent"), 5,028,186 ("the '186 Patent"), 4,878,790 ("the '790 Patent"), 4,650,386 ("the '386 Patent"), 4,673,150 ("the '150 Patent"), 4,752,170 ("the '170 Patent"), 4,294,156 ("the '156 Patent") and 4,075,924 ("the '924 Patent"). Figures 2-5 below show a copy of the labels listing the '901 Patent, the

'186 Patent, the '386 Patent, and the '170 Patent on the Toggler® Wall Anchors. In addition, Exhibits I-P attached hereto show Defendants' product literature for the Toggler® Wall Anchors listing the '901 Patent, the '186 Patent, the '790 Patent, the '386 Patent, the '150 Patent, the '170 Patent, the '156 Patent and the '924 Patent. Further, attached as Exhibits A-H are a true and correct copies of the '901 Patent, the '186 Patent, the '790 Patent, the '386 Patent, the '150 Patent, the '170 Patent, the '156 Patent and the '924 Patent.

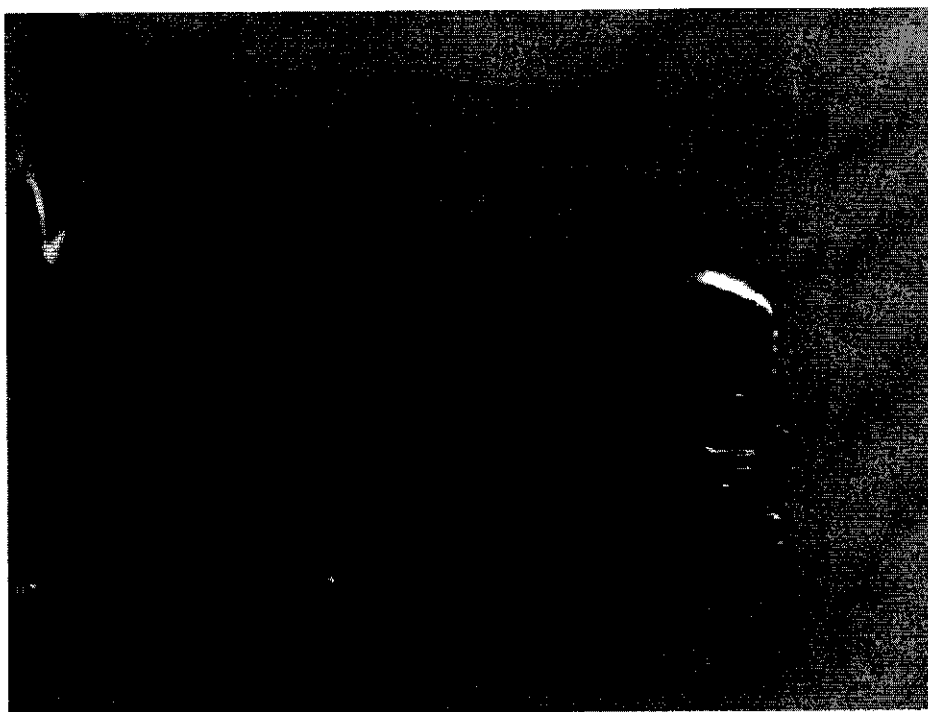


Figure 2

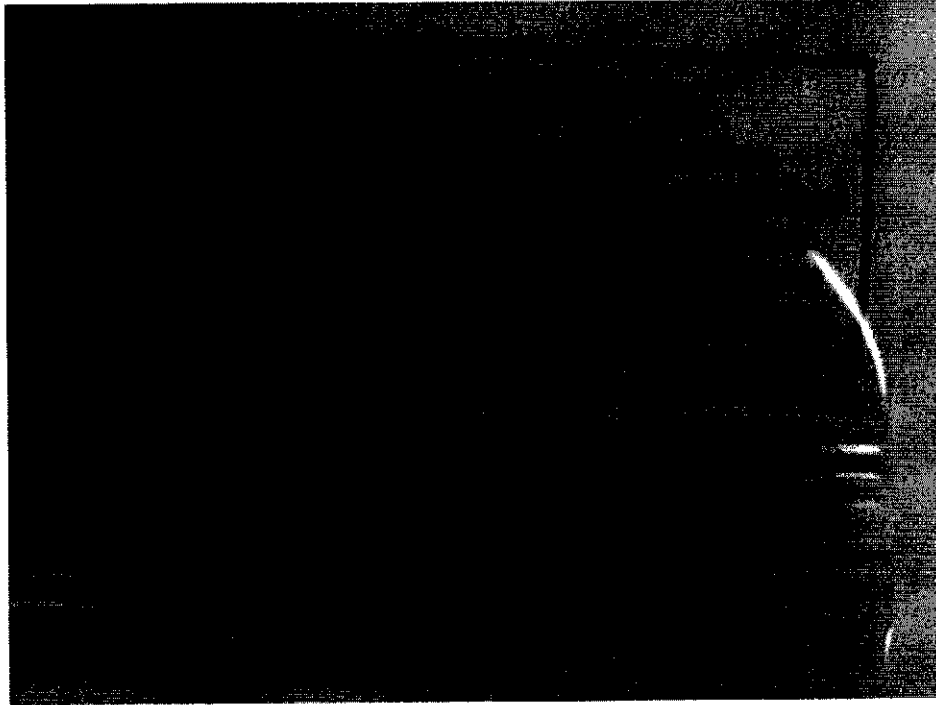


Figure 3

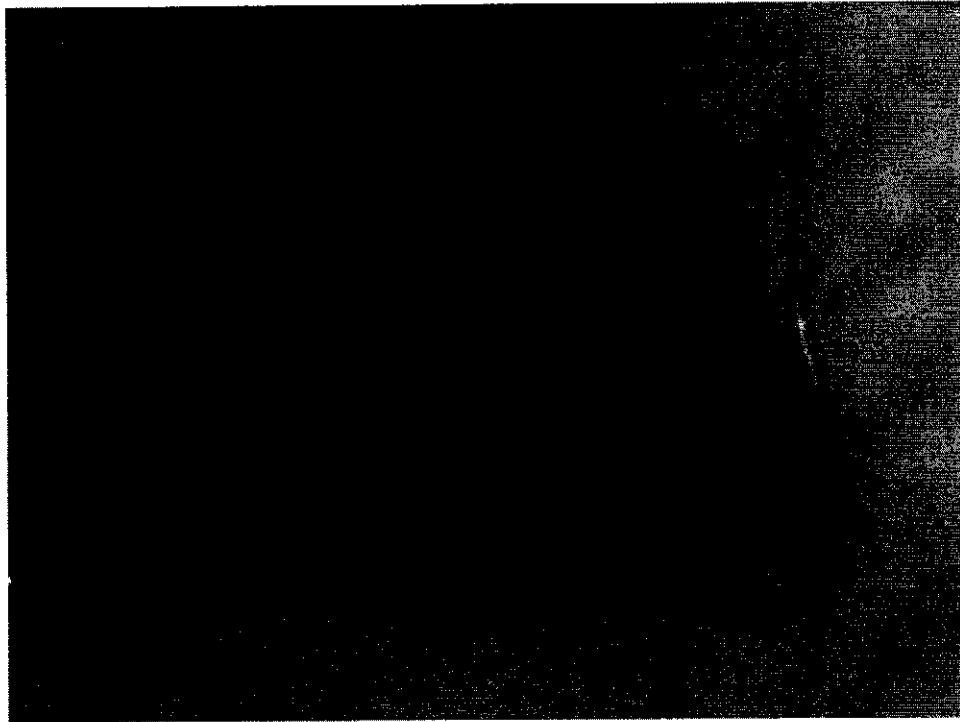


Figure 4

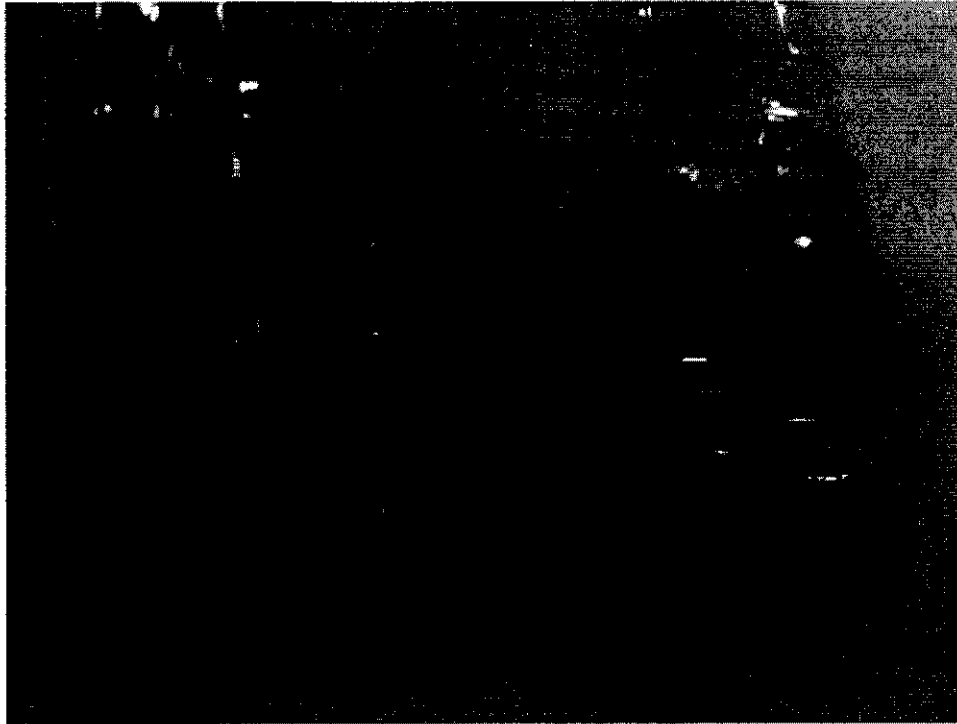


Figure 5

22. The '901 Patent, entitled "Over-Center Hollow Wall Anchor With Enhanced Holding Strength," was filed February 26, 1990 and issued on February 19, 1991. The '901 Patent expired on February 26, 2010.

23. The '186 Patent, entitled "Hollow Wall Anchor With Enhanced Holding Strength," was filed on January 29, 1990 and issued on July 2, 1991. The '186 Patent expired on January 29, 2010.

24. The '790 Patent, entitled "Expansible Fastening Element," was filed April 2, 1985 and issued on November 7, 1989. The '790 Patent expired on November 7, 2006.

25. The '386 Patent, entitled "Fully Articulable Positioning Device," was filed on January 24, 1985 and issued on March 17, 1987. The '386 Patent expired on January 24, 2005.

26. The '150 Patent, entitled "Plastic Fasteners," was filed on October 22, 1984 and issued on June 16, 1987. The '150 Patent expired on October 22, 2004.